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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

16 CR 131 (BM)

5 DAILE FERGUSON,

6 Defendant.

7 -----x

8 New York, N.Y.

9 May 19, 2016

12:10 p.m.

10 Before:

11 HON. BARBARA MOSES,

12 Magistrate Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 ELI MARK

Assistant United States Attorney

18 ANTHONY STRAZZA

19 Attorney for Defendant
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(Case called)

MR. MARK: Good afternoon, your Honor. Eli Mark for the government.

THE COURT: Mr. Mark.

MR. STRAZZA: Good afternoon, your Honor. Anthony Strazza appearing for Daile Ferguson.

THE COURT: Mr. Strazza, Mr. Ferguson.

We are here, as I understand it, to take Mr. Ferguson's plea to Count One of the indictment, correct?

MR. STRAZZA: Correct.

MR. MARK: Yes, your Honor.

THE COURT: Mr. Ferguson, my courtroom deputy has just handed to me a document entitled a Consent to Proceed before a United States Magistrate Judge on a Felony Plea Allocution. Is that your signature on the form?

THE DEFENDANT: Yes, your Honor.

THE COURT: Thank you.

What this form says is that knowing that you have the right to have your plea taken by a United States District Judge, you are consenting to have your plea taken instead by a magistrate judge, such as myself. You will have all of the same rights and protections as if you were before a district judge, and if your plea is accepted and you are sentenced, you will be sentenced by a United States District Judge.

Did you sign the form voluntarily?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Before you signed the form, did your
3 lawyer, Mr. Strazza, explain it to you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you wish to proceed here in my
6 courtroom today?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Very well. I will accept the consent.

9 My understanding, as I stated at the outset of this
10 proceeding, is that you wish to change your plea and enter a
11 plea of guilty to Count One against you, is that correct?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Now, before deciding whether to accept
14 your guilty plea, I need to ask you some questions. It is
15 important that you answer my questions honestly and completely.
16 The reason I am going to ask you these questions is that I need
17 to make sure that you understand your rights, I need to make
18 sure that you are pleading guilty of your own free will, and I
19 need to make sure that you're pleading guilty because you
20 actually are guilty and not for any other reason. Do you
21 understand what I am saying?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: If you don't understand any of the
24 questions that I ask you or if you need time to consult with
25 Mr. Strazza, just let me know, because we do want you to fully

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1 understand every step of the proceedings here. Are you ready?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: All right. I will ask Mr. Snell to swear
4 you.

5 (Defendant sworn)

6 THE COURT: Mr. Ferguson, you are now under oath. If
7 you answer any of my questions falsely, you can be prosecuted
8 for perjury based on your false answers. Do you understand
9 that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Let's pause for just a moment.

12 Mr. Ferguson, what is your full name?

13 THE DEFENDANT: Daile Ferguson.

14 THE COURT: The middle name is what?

15 THE DEFENDANT: Clayon.

16 THE COURT: C-l-a-i-r-e?

17 THE DEFENDANT: C-l-a-y-o-n.

18 THE COURT: C-l-a-y-o-n?

19 THE DEFENDANT: Yes.

20 THE COURT: How old are you?

21 THE DEFENDANT: I am 38 years old.

22 THE COURT: Are you a United States citizen?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: What country are you a citizen of?

25 THE DEFENDANT: Jamaica.

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1 THE COURT: How far did you go in school?

2 THE DEFENDANT: I have an associate's degree.

3 THE COURT: That's two years of college?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Did you get that in Jamaica or here in the
6 United States?

7 THE DEFENDANT: Here in the United States.

8 THE COURT: Where did you get that degree?

9 THE DEFENDANT: University of Phoenix.

10 THE COURT: I'm sorry, I can barely hear you.

11 THE DEFENDANT: University of Phoenix.

12 THE COURT: Is that one of those online universities?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: OK. I take it that you can read and write
15 competently?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Are you now under the care of any doctor
18 or psychiatrist or psychologist for any reason?

19 THE DEFENDANT: I am under the care of Dr. Grant,
20 Paula Grant.

21 THE COURT: A medical doctor?

22 THE DEFENDANT: Yes.

23 THE COURT: What is the reason for that?

24 THE DEFENDANT: For my HIV status.

25 THE COURT: I'm sorry, you're speaking very softly.

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1 Can you put the microphone a little closer?

2 MR. STRAZZA: Your Honor, out of privacy concerns, may
3 we approach to answer that question?

4 THE COURT: Sure. Come on up.

5 (At the sidebar)

6 THE COURT: What's the issue.

7 MR. STRAZZA: Mr. Ferguson is HIV positive. I didn't
8 even discuss it with him in terms of whether or not he wanted
9 to announce it in open court. I just assumed it would be
10 better off on the sidebar.

11 THE COURT: I don't think that particularly impacts on
12 his ability to plead. Are you okay with me not discussing it
13 further?

14 MR. MARK: I don't think it is necessary to discuss
15 it.

16 MR. STRAZZA: Thank you.

17 THE COURT: OK.

18 (In open court)

19 THE COURT: Mr. Ferguson, I am going to change the
20 question a little bit.

21 Are you under the care by any doctor, psychiatrist or
22 a psychologist for any condition which could affect your mental
23 processes or your ability to make a judgment?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Within the last six months, have you been

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1 under the care of any psychiatrist or psychologist?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: And you're not under the care of a
4 psychiatrist or a psychologist now?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: All right. In the last 24 hours, have you
7 taken any drugs, medicine, pills, whether or not prescribed by
8 a doctor, that would affect your mental processes?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Within the last 24 hours, have you
11 consumed any alcohol?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Is your mind clear today?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand what we are doing here?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Does either counsel have any objection to
18 the defendant's competence to plead?

19 MR. MARK: No, your Honor.

20 MR. STRAZZA: No, your Honor.

21 THE COURT: All right. Mr. Ferguson, you have, I
22 hope, received a copy of the indictment in your case which
23 contains the charges against you?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Have you read it?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand what it says you did?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Have you also had time to talk with your
5 attorney about the charges and how you want to plead?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: I am now going to explain certain
8 constitutional rights that you have. These are rights that you
9 will be giving up if you enter a plea of guilty, so please
10 listen carefully to what they are. And, again, if you don't
11 understand something, stop me, because we want to make sure
12 that you are clear on these issues.

13 First, under the Constitution and laws of the United
14 States, you have a right to plead not guilty to all charges
15 against you. Do you understand that?

16 THE DEFENDANT: Yes, your Honor, I understand.

17 THE COURT: Second, if you plead not guilty, you would
18 be entitled under the Constitution to a trial, to a speedy and
19 public trial by a jury of all charges against you. At that
20 trial, you would be presumed innocent, and it is the government
21 that would be required to prove you guilty beyond a reasonable
22 doubt before you could be found guilty, a jury of 12 people
23 would have to agree unanimously that you are, in fact, guilty
24 beyond a reasonable doubt. Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Third, if you do decide to go to trial,
2 then at that trial and at every stage of your case, you have
3 the right to be represented by an attorney. If you could not
4 afford an attorney, an attorney would be appointed to represent
5 you at no charge to you. Even if you continue with retained
6 counsel, that is privately retained counsel, defense counsel,
7 and ran out of money, you would be entitled at that point to
8 have an attorney appointed for you paid for by the government.
9 You would be entitled to representation all the way through
10 trial and not just for your plea. So your decision to plead
11 guilty should not depend on whether you can afford to hire an
12 attorney. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: We will pause again just a moment.

15 Fourth, Mr. Ferguson, during a trial, the witnesses
16 for the prosecution would have to come to court and testify in
17 your presence where you could see them and hear them and your
18 lawyer could cross-examine them. Your lawyer could also offer
19 evidence on your behalf and he would be able to use the court's
20 power, the court's subpoena power, to require witnesses to come
21 to court and testify on your behalf even if they were reluctant
22 to come. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Fifth, at a trial, you would have the
25 right to testify in your own defense, if you wished, and you

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1 would also have the right not to testify. If you chose not to
2 testify, that could not be used against you in any way. That
3 is, the government could not argue or suggest that the fact
4 that you chose not to testify was evidence of your guilt. Do
5 you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Sixth, if you were convicted at trial, you
8 would have the right to appeal that verdict to a higher court.
9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: As I said before, you have the right to
12 plead not guilty. Even today, I know you came to court
13 prepared to plead guilty, but even today you have the right to
14 change your mind, persist in your not guilty plea, and to go to
15 trial. However, if you do plead guilty and if the court
16 accepts your plea, you will give up the right to trial and the
17 other rights that I just described to you. If you plead
18 guilty, there won't be any trial, there will only be a sentence
19 and you and the government will have the chance to make certain
20 arguments about what that sentence should be, but there will
21 not be any further trial to determine whether you were guilty
22 or not guilty of the charges against you. Do you understand
23 that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you also understand that the decision

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1 as to the appropriate sentence to be imposed in your case will
2 be entirely up to the sentencing judge. That judge will be
3 limited only by what the law requires. What that means is,
4 even if you are surprised or disappointed by the sentence, even
5 if the sentence is different than what you expect based on your
6 plea agreement with the government, you will still be bound by
7 your underlying guilty plea and you can't take it back. Do you
8 understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Finally, if you do plead guilty, you'll be
11 giving up your Fifth Amendment right, that is your right not to
12 incriminate yourself. I will ask you questions about what you
13 did. I will ask you these questions in order to satisfy myself
14 that you are pleading guilty because you actually are guilty.
15 In other words, you will be admitting what we call your factual
16 or actual guilt as well as your legal guilt. Do you understand
17 that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Count One of the indictment in your case
20 charges you with participating in a wire fraud conspiracy in
21 violation of Title 18 of the United States Code, Section 1349.
22 I will ask the Assistant United States Attorney to state the
23 elements of the charge. The elements, Mr. Ferguson, are the
24 things the government would have to prove at trial.

25 MR. MARK: If this case were to proceed to trial, the

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1 government would have to prove two elements beyond a reasonable
2 doubt:

3 First, that two or more persons agreed to violate a
4 federal fraud crime under Title 18. In this case, we are
5 talking about 18 U.S.C. 1343.

6 And second, the defendant knowingly and intentionally
7 became a member of that conspiracy.

8 As to the second, 1343, the wire fraud statute, that
9 has three elements:

10 First, that there was a scheme or artifice to defraud
11 or to obtain money or property by materially false and
12 fraudulent presentences, representations or promises;

13 Second, the defendant knowingly and willfully
14 participated in this scheme or artifice to defraud with the
15 knowledge of its fraudulent nature and with specific intent to
16 defraud or that he knowingly and intentionally aided and
17 abetted others in that scheme;

18 And third, that in execution of that scheme, the
19 defendant used or caused the use of interstate wires.

20 The government also would have to prove by a
21 preponderance of the evidence venue in this case in the
22 Southern District of New York.

23 THE COURT: Thank you.

24 Mr. Ferguson, I am now going to tell you about the
25 maximum possible penalty for the crime that is charged in

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1 Count One of the indictment against you. The maximum possible
2 penalty means the most that could be imposed. It does not mean
3 that this is what you would necessarily receive. However, by
4 pleading guilty, you are exposing yourself to the possibility
5 of receiving a punishment or a combination of punishments up to
6 the maximum that I am about to describe. Do you understand
7 that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: The maximum term of imprisonment for the
10 crime charged in Count One is 20 years, 20 years in prison. In
11 addition, it could be followed by a maximum term of supervised
12 release of three years. Supervised release means that after a
13 person is released from prison, they can be made subject to
14 supervision by the probation department. If you are placed on
15 supervised release and thereafter violate any condition of that
16 supervised release, the judge can revoke the term of supervised
17 release previously imposed and return you to prison without
18 giving you any credit for the time that you previously served
19 on supervised release. Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: OK. There is no mandatory minimum,
22 Mr. Mark?

23 MR. MARK: That's correct, your Honor.

24 THE COURT: In addition to the potential prison term
25 and term of supervised release, there is a financial penalty

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1 for Count One. The maximum possible financial penalty or fine
2 for this crime is \$250,000 or twice the gross monetary profit
3 derived from the offense or twice the gross monetary loss to
4 persons other than yourself as a result of the offense,
5 whichever of those is the largest.

6 You can also be required to pay restitution to any
7 victims of the crime in an amount determined by the court, and
8 in addition, by pleading guilty, you will admit to the
9 forfeiture allegations of the indictment. And it is my
10 understanding that you have already worked out with the
11 government a preliminary order of forfeiture that would require
12 you to forfeit the sum of \$439,386.79. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: I am also required by law to mention that
15 in addition to the punishments that I have just told you about,
16 there is a special assessment or fine of \$100 that is required
17 to be imposed on each count, in this case, one count of the
18 conviction.

19 Now, because you are not a citizen of the United
20 States, Mr. Ferguson, you need to understand that your guilty
21 plea may also have serious consequences for your ability to
22 remain in the United States. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that your removal or
25 deportation become highly likely and may be mandatory?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. Do you understand that you
3 will remain bound by your guilty plea, you will not be able to
4 take it back, regardless of the immigration consequences of
5 that plea?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Has anyone threatened or coerced you in
8 any way in order to get you to plead guilty?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Mr. Snell, may I see the letter, please?
11 Thank you.

12 As I mentioned, it was my understanding that there was
13 a written plea agreement entered into on your behalf with the
14 government. I have a copy here of a letter from the government
15 written to your lawyer dated May 9, 2006. It looks like it has
16 your signature on the last page?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Is this your signature, sir?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: OK. Did you read the letter before you
21 signed it?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Did you understand it?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Has anyone promised you or offered you

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1 anything other than what is in this written plea agreement for
2 the record to get you to plead guilty?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: So looking at your plea agreement, it
5 appears that you and the government have reached agreement
6 regarding the appropriate calculation of your sentence under
7 the sentencing guidelines, is that right?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And specifically the agreement is that the
10 appropriate sentencing range under the guidelines will be 33 to
11 41 months' imprisonment, 33 to 41 months, is that correct?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Under this agreement, neither you nor the
14 government is allowed to argue to the sentencing judge for a
15 calculation that is different from the one set forth in the
16 letter. Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you also understand that this agreement
19 limits your right to appeal from any sentence that may be
20 imposed?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Specifically as long as the judge
23 sentences you to a prison term which is no more than 41 months,
24 and as long as the judge imposes a fine which is no more than
25 \$75,000, you will be giving up your right to appeal the

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1 sentence as well, whether by direct appeal, by writ of habeas
2 corpus or by any other means. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: OK. Do you understand that under the
5 terms of this plea agreement set forth in the May 9 letter from
6 the government, even if you later learn that the government
7 withheld from your lawyer information that would have been
8 helpful to you in defending yourself at trial, you won't be
9 able to complain about that and you won't be able to withdraw
10 your guilty plea?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: OK. Most importantly, do you understand
13 that the terms of your written plea agreement with the
14 government are not binding on the sentencing judge?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: The judge could reject those calculations,
17 the judge could impose either a shorter or a longer sentence on
18 you without permitting you to withdraw your guilty plea. Do
19 you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: As a matter of fact, the sentencing judge
22 is required to make an independent calculation of the
23 appropriate sentencing range under the guidelines and the
24 sentencing judge will also have the discretion to give you a
25 sentence above or below that range up to the maximum that I

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1 told you about earlier.

2 In other words, the sentencing judge will pronounce
3 whatever sentence they feel is appropriate for you whether or
4 not it is within the range set out in your plea agreement. The
5 court in setting that sentence may consider, in addition to the
6 guidelines and in addition to departures above or below the
7 guidelines, the factors set forth in 18, United States Code,
8 Section 3553(a). The court will also consider a presentence
9 report prepared by the probation department in advance of
10 sentencing. And you will, through your lawyer, have an
11 opportunity to look at that report and challenge any facts, if
12 you feel they are inaccurate, that are set forth in the
13 presentencing report.

14 Let me ask first the government, Mr. Mark, if there is
15 anything else in the plea agreement that you would like me to
16 cover with the defendant?

17 MR. MARK: No, your Honor.

18 THE COURT: Mr. Strazza?

19 MR. STRAZZA: No, your Honor.

20 THE COURT: I think I asked you this before, but just
21 to make sure, is there anything, any promises or agreements,
22 any promises made to you or agreements that you have entered
23 into, other than what is in the May 9 plea agreement, to get
24 you to plead guilty?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: All right. You have been advised of the
2 charges against you. You have been advised of the possible
3 penalties you face. You have been advised of the rights that
4 you are giving up. Is it still your intention to plead guilty
5 to the charge set out in Count One of the indictment in your
6 case?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Very well, sir.

9 Will your plea be voluntary and made of your own free
10 will?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Then I will ask you now with respect to
13 Count One, how do you plead; guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: Mr. Ferguson, you now need to tell me what
16 it is that you did that violated the law.

17 THE DEFENDANT: From 2009 in or about from 2009 to
18 2014, I agreed with others to participate in --

19 THE COURT: Slow down a little bit so I can understand
20 you.

21 THE DEFENDANT: OK.

22 THE COURT: You said that from 2009 until in or about
23 2014?

24 THE DEFENDANT: Yes.

25 From in or about 2009 to 2014, I agreed with others to

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1 participate in a Jamaican laundering scheme that defrauded
2 people out of money. More specifically, I received money and
3 sent it to others in Jamaica, and some of these transactions
4 was done by wire transfer.

5 THE COURT: You're saying you received and sent money
6 by wire transfer as part of your Jamaican laundering scheme?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Where were you when you took place in the
9 scheme?

10 THE DEFENDANT: In the Bronx.

11 THE COURT: In the Bronx, New York?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you know that what you were doing was
14 wrong?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And when you participated in this scheme,
17 did you intend to defraud the people you were receiving money
18 from?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Mr. Mark, is that a sufficient factual
21 predicate for the guilty plea?

22 MR. MARK: Yes, your Honor.

23 THE COURT: Is there anything else you would like me
24 to ask the defendant about his conduct?

25 MR. MARK: No, your Honor.

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1 THE COURT: Mr. Ferguson, based on your responses to
2 my questions and my observation of your demeanor, I find that
3 you are competent to enter a guilty plea. I am also satisfied
4 that you understand your rights, including your right to a
5 trial. I believe that you are aware of the consequences of
6 your plea, including the sentence that could be imposed. I am
7 convinced that you are voluntarily pleading guilty and that you
8 have admitted that you are guilty as charged in Count One. For
9 these reasons, I will recommend that the district judge accept
10 your plea.

11 Mr. Mark, you will order a copy of the transcript and
12 submit it to the district judge?

13 MR. MARK: I will, your Honor.

14 Also, for the record, the judge has set a sentencing
15 date in this matter.

16 THE COURT: Of?

17 MR. MARK: September 8 at noon.

18 THE COURT: Sentencing date, September 8, 2016, at
19 noon.

20 Recognizing that you have some time from now until
21 then, I will direct that the presentence report be prepared.

22 Mr. Mark, when can you deliver the case summary for
23 purposes of the presentence report?

24 MR. MARK: We will do so within two weeks, your Honor.

25 THE COURT: Very well.

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1 Mr. Strazza, can you be able to be interviewed by the
2 probation department with your client within those same two
3 weeks?

4 MR. STRAZZA: Yes, your Honor.

5 THE COURT: The defendant is currently on bail, is
6 that correct?

7 MR. MARK: Yes, your Honor.

8 THE COURT: Will those conditions continue?

9 MR. MARK: They will, your Honor.

10 THE COURT: All right. Mr. Ferguson, I need to warn
11 you that you will remain at liberty under the same conditions
12 that have applied up until now. Those conditions will continue
13 to apply and any violation of those conditions, as you know,
14 can have severe consequences, including revocation of bail and
15 prosecution for bail jumping. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Anything further from the government?

18 MR. MARK: No, your Honor.

19 THE COURT: Mr. Strazza?

20 MR. STRAZZA: No, thank you.

21 THE COURT: Thank you, gentlemen. We are adjourned.

22 (Adjourned)